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4 Attorney for Secured Creditor
U.S. BANK TRUST NATIONAL ASSOCIATION, NOT IN ITS
5 INDIVIDUAL CAPACITY BUT SOLELY AS OWNER TRUSTEE
FOR RCF2 ACQUISITION TRUST

6
7 **UNITED STATES BANKRUPTCY COURT**
NORTHER DISTRICT OF CALIFORNIA – OAKLAND DIVISION

8 **IN RE:**

9 **Michael Anthony Mannina,**
10 **Debtor.**

CASE NO.: 23-40197
CHAPTER 13

R.S. No. RAS - 1

DECLARATION REGARDING
DEBTOR'S DEFAULT ON
STIPULATION GRANTING
ADEQUATE PROTECTION
PAYMENTS AND REQUEST FOR
RELIEF FROM STAY

14
15 I, Genevieve A. Jacobs, declare under penalty of perjury as follows:

16 1. I am over the age of eighteen and am authorized to make this declaration on behalf of
17 Selene Finance LP.

18 2. I am employed as a Bankruptcy Specialist for Selene Finance
19 LP. In this position, I have access to the business records of Selene Finance LP and my
20 responsibilities include ascertaining and verifying amounts due and payable as to delinquent
21 bankruptcy accounts. This Declaration is provided in support of the Motion for Relief from Stay
(DE#59) (the "Motion") filed.

22 - 1 -

CASE NO. 23-40197

23 **DECLARATION REGARDING DEBTOR'S DEFAULT ON STIPULATION GRANTING ADEQUATE**
PROTECTION PAYMENTS AND REQUEST FOR RELIEF FROM STAY

1 3. Selene Finance LP, is the servicer of the loan and is authorized to act on behalf of
2 the holder of the Note U.S. BANK TRUST NATIONAL ASSOCIATION, NOT IN ITS
3 INDIVIDUAL CAPACITY BUT SOLELY AS OWNER TRUSTEE FOR RCF2 ACQUISITION
4 TRUST.

5 4. I make this declaration based upon my review of the records with regard to this
6 underlying loan transaction, which are kept in the ordinary course of business of Selene Finance
7 LP. I have personal knowledge of and am familiar with the types of records maintained by Selene
8 Finance LP in connection with the loan that is the subject of the Motion (the "Loan") and the
9 procedures for creating those types of records. I have access to and have reviewed the books,
10 records and files of Selene Finance LP, that pertain to the Loan and extensions of credit given to
Debtor(s) concerning the property securing such Loan.

11 5. The information in this declaration is taken from Selene Finance LP's business
12 records regarding the Loan. The records are: (a) made at or near the time of the occurrence of the
13 matters recorded by persons with personal knowledge of the information in the business record,
14 or from information transmitted by persons with personal knowledge; (b) kept in the course of
15 Selene Finance LP's regularly conducted business activities; and (c) it is the regular practice of
16 Selene Finance LP, to make such records.

17 6. I make this Declaration for use in Connection with a Motion for Relief from Stay
18 (DE #59) filed by Movant, on or about July 25, 2023, and the Order (DE #67) of this Court on
19 August 22, 2023.

20 7. Per the terms of the Order, on or about October 26, 2023, a Notice of Default was
21 served on the Debtors and Debtors' attorney. A copy of the Notice of Default is annexed hereto
22 and made a part hereof as part of the Exhibit.

8. Based on Debtor failure to cure the default and the terms of the Order, we would respectfully request that this Court issue an Ex Parte Order Granting Relief from the Automatic Stay be entered.

9. The following chart sets forth those post-petition payments due pursuant to the terms of the Order that have been missed by the Debtors as of November 7, 2023.

Number of Missed Payments	From	To	Monthly Missed Principal and Interest	Monthly Missed Escrow (if applicable)	Monthly Payment Amount	Total Amounts Missed
2	10/1/2023	11/1/2023	N/A	N/A	\$1,537.57	\$3,075.14
Less post-petition partial payments (suspense balance):						(\$768.79)

Total: **\$2,306.35**

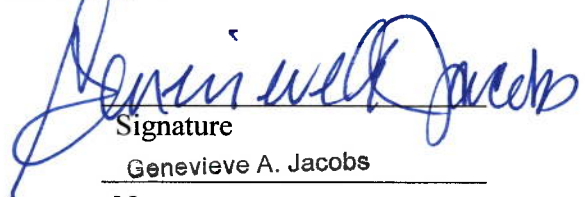
10. As of November 7, 2023, the total post-petition arrearage/delinquency is **\$4,778.03**, consisting of (i) the foregoing total of missed post-petition payments in the amount of **\$2,306.35**, plus (ii) the following Stipulation Payments:

[SPACE INTENTIONALLY LEFT BLANK]

Date	Description	Amount
9/15/2023	Stipulation Payment	\$1,235.84
10/15/2023	Stipulation Payment	\$1,235.84
	Total:	\$2,471.68

Pursuant to 28 U.S.C. § 1746, I hereby declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 22nd day of November, 2023.



Signature

Genevieve A. Jacobs

Name

Bankruptcy Specialist

Title

August 22, 2023

EDWARD J. EMMONS, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA



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ANSCHUTZ, SCHNEID &
CRANE, LLP
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Telephone:(561)241-6901 ext.52286

The following constitutes the order of the Court.
Signed: August 22, 2023

Attorneys for Creditor
U.S. BANK TRUST NATIONAL
ASSOCIATION, NOT IN ITS
INDIVIDUAL CAPACITY BUT
SOLELY AS OWNER TRUSTEE
FOR RCF2 ACQUISITION TRUST

A handwritten signature in black ink, reading "William J. Lafferty, III", is written over a horizontal line.

William J. Lafferty, III
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA – OAKLAND DIVISION

In re

Michael Anthony Mannina,

Debtor.

Case No. 23-40197-WJL

R.S. NO. RAS-1

Chapter 13

**ORDER APPROVING STIPULATION
GRANTING ADEQUATE
PROTECTION PAYMENTS**

The parties have agreed to the terms set forth in the Stipulation Granting Adequate Protection Payments (the “Stipulation”) and are bound by the terms of their Stipulation. The Stipulation, docket number 63, is hereby approved and made an order of the court.

****END OF ORDER****

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COURT SERVICE LIST

Electronically mailed to ECF registered participants

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5 Attorneys for Creditor
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6 ASSOCIATION, NOT IN ITS INDIVIDUAL
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7 TRUSTEE FOR RCF2 ACQUISITION TRUST

8 **UNITED STATES BANKRUPTCY COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA – OAKLAND DIVISION**

10 **In re**

11 **Michael Anthony Mannina,**

12 **Debtor.**

Case No. **23-40197**

Chapter 13

**STIPULATION GRANTING
ADEQUATE PROTECTION
PAYMENTS**

15 This Stipulation Granting Adequate Protection Payments (“Stipulation”) is entered by
16 and between Selene Finance LP as Servicer for U.S. BANK TRUST NATIONAL
17 ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS OWNER
18 TRUSTEE FOR RCF2 ACQUISITION TRUST (collectively the “Creditor”), by and through its
19 attorneys of record, Robertson, Anschutz, Schneid & Crane LLP, and Michael Anthony Mannina
20 (“Debtor”), by and through her attorney of record, Michael D. Lee. Debtor and Creditor are
21 collectively sometimes referred to herein as the “Parties.”

22 The property which is the subject of this Stipulation is commonly known as 2755
23 Eastgate Avenue, Concord, CA 94520. (“Property”).

24 **THE PARTIES STIPULATE AS FOLLOWS:**

25 1. Debtors shall tender regular monthly payments in the amount of **\$1,537.57**, which
26 amount is subject to change, pursuant to the terms of the note and deed of trust, commencing
27
28

1 September 1, 2023, and continuing until all such outstanding amount under the Note are to be
2 paid in full.

3 2. The post-petition arrears are calculated as follows:

4 **Monthly Mortgage Payments:**

5

Payment Due Date	Monthly Payment Amount	Missed Payments
4/1/2023 – 8/1/2023	\$1,537.57	5
	TOTAL:	\$7,687.85

6
7
8

9 **Attorney's Fees & Costs for the Motion:**

10 Attorney's Fees: \$1,050.00
11 Costs (Filing Fee): \$188.00
TOTAL: \$1,238.00

12 **Total Arrears:**

13 Post-Petition Delinquent Payments: \$7,687.85
14 Fees & Costs \$1,238.00
15 LESS: Suspense \$(1,510.79)

16 **TOTAL: \$7,415.06 (the "Post-Petition Arrears")**

17 3. In addition to regular monthly payments, Debtor shall tender payments in the sum
18 of **\$1,235.84** commencing September 15, 2023, and continuing on the 15th day of each month
19 thereafter until January 15, 2024, with a final payment in the amount of **\$1,235.86** on February
20 15, 2024, as follows.

21

APO Due Date	Payment Amount
09/15/2023	\$1,235.84
10/15/2023	\$1,235.84
11/15/2023	\$1,235.84
12/15/2023	\$1,235.84
01/15/2024	\$1,235.84

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02/15/2024	\$1,235.86
TOTAL:	\$7,415.06

All payments due and owing under the Note and to cure the Post-Petition Arrears pursuant to this Stipulation shall be paid to Creditor as follows:

Selene Finance LP
3501 Olympus Boulevard
Suite 500
Dallas, Texas 75019

4. In the event of any future default of any provision of this Stipulation, Creditor shall provide written notice to Debtor via U.S. First Class Mail at 2755 Eastgate Avenue, Concord, CA 94520 and to Debtor's counsel via email at Michael.Lee@Lee-Li.com, indicating the nature and extent of the default. If Debtor fail to cure the default with certified funds after the passage of ten (10) calendar days from the date that the written notice of default is placed in the mail, then Creditor may file an *Ex Parte* Declaration of Non-Cure and lodge an Order Terminating the Automatic Stay with respect to the Property with the Bankruptcy Court. Upon entry of the Order Terminating the Automatic Stay, the automatic stay under 11 U.S.C. § 362(a) and the co-debtor stay under 11 U.S.C. § 1301(a) (to the extent applicable) shall immediately be terminated in its entirety so that Creditor may proceed under applicable non-bankruptcy law to enforce its rights and remedies against the Property, including but not limited to, commencing non-judicial foreclosure proceedings and obtaining possession of the Property without further order of the Bankruptcy Court.

5. The acceptance by Creditor of a late or partial payment shall not act as a waiver of Creditor's right to proceed hereunder.

6. In the event that Creditor is granted relief from the automatic stay, Creditor and Debtor hereby stipulate and agree that the fourteen (14) day stay provided for by Federal Rule of Bankruptcy Procedure 4001(a)(3) shall be waived in its entirety.

1 7. The foregoing terms and conditions shall be binding only during the pendency of
2 the above-captioned bankruptcy case. If, at any time, the automatic stay under 11 U.S.C. §
3 362(a) and/or the co-debtor stay under 11 U.S.C. § 1301(a) (to the extent applicable) is
4 terminated with respect to the Property by court order or by operation of law, the terms and
5 conditions of this Stipulation shall cease to be binding and Creditor may proceed to enforce its
6 remedies under applicable non-bankruptcy law against the Property, Debtor, and/or any co-
7 debtor (to the extent applicable).

8 8. In the event that this case is converted to a case under Title 11, Chapter 7 of the
9 United States Code, the automatic stay provided for under 11 U.S.C. § 362(a) with respect to the
10 Property shall automatically be terminated in its entirety without any further notice, order, or
11 proceeding of the Bankruptcy Court. Further, if the automatic stay under 11 U.S.C. § 362(a) is
12 terminated as a matter of law, the foregoing terms and conditions shall cease to be binding and
13 Creditor may proceed to enforce its remedies under applicable non-bankruptcy law against the
14 Property, Debtor, and/or any co-debtor (to the extent applicable).

15 9. Any notice that Creditor shall be required to provide to Debtor or Debtor's
16 attorney pursuant to the terms of this Stipulation shall not in any manner whatsoever be
17 construed to be a communication under the Fair Debt Collection Practices Acts (FDCPA) as set
18 forth in 15 U.S.C. § 1692 *et seq.*

19 **IT IS SO STIPULATED AND AGREED:**

20
21 Dated: August 8, 2023

LEE BANKRUPTCY & RESTRUCTURING
COUNSEL



MICHAEL D. LEE
Attorney for Debtor

22
23
24
25 Dated: August 8, 2023

ROBERTSON, ANSCHUTZ, SCHNEID &
CRANE LLP

/s/ Fanny Wan

FANNY WAN
Attorney for Creditor

1 Fanny Wan (SBN 277606)
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4 Attorney for U.S. BANK TRUST
5 NATIONAL ASSOCIATION, NOT
6 IN ITS INDIVIDUAL CAPACITY
BUT SOLELY AS OWNER
7 TRUSTEE FOR RCF2
ACQUISITION TRUST

8 **UNITED STATES BANKRUPTCY COURT**
NORTHERN DISTRICT OF CALIFORNIA – OAKLAND DIVISION

9 **IN RE:**

10 **Michael Anthony Mannina,**
11 **Debtor.**

CASE NO.: 23-40197
CHAPTER 13
R.S. No. RAS - 1

MOTION FOR RELIEF FROM
AUTOMATIC STAY

Date: August 16, 2023
Time: 9:30 AM
Location: 1300 Clay Street, Suite 300
Oakland, CA 94612
Judge: William J. Lafferty

16 **I. INTRODUCTION**

17 Secured Creditor, U.S. BANK TRUST NATIONAL ASSOCIATION, NOT IN ITS
18 INDIVIDUAL CAPACITY BUT SOLELY AS OWNER TRUSTEE FOR RCF2 ACQUISITION
19 TRUST (hereinafter referred to as “Movant”), by and through the undersigned counsel, hereby
20 moves this Court for relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1) for cause
21 on the grounds that Debtor have defaulted on the obligations secured by the subject property and
22 Movant’s interest in the property is not adequately protected.

1 the United States Bankruptcy Code on February 22, 2023.

2 On July 20, 2005, Debtor Michael A. Mannina executed and delivered a Promissory Note
3 ("Note") and Deed of Trust ("Deed of Trust") securing payment of the Note in the amount of
4 \$322,000.00 to Countrywide Bank, a Division of Treasury Bank, N.A. ("Lender"). The Deed of
5 Trust was recorded on July 29, 2005, in Document Number 2005-0282543-00 in the Public
6 Records of Contra Costa County, California. The loan was transferred to Secured Creditor. True
7 and accurate copies of documents establishing a perfected security interest and ability to enforce
8 the terms of the Note are attached hereto as Composite Exhibit "A." The documents include
9 copies of the Note with any required indorsements, Recorded Deed of Trust, Assignment(s) of
10 Deed of Trust, and any other applicable documentation supporting the right to seek a lift of the
automatic stay and foreclose, if necessary.

11 The Deed of Trust provides Secured Creditor a lien on the real property located in Contra
12 Costa County, California, and legally described in Exhibits. This property is located at the street
13 address of: 2755 Eastgate Avenue, Concord, California 94520 ("Subject Property").

14 The terms of the aforementioned Note and Deed of Trust have been in default, and remain
15 in default, since April 1, 2023. See Secured Creditor's Declaration filed concurrently with this
16 Motion and attached hereto as Exhibit B.

17 As of July 11, 2023, Secured Creditor is due the following amount:

Principal Balance	\$226,143.75
Interest	\$13,816.41
Escrow Advance	\$4,331.59
Suspense Balance	(\$24.98)
Total Fees	\$184.00
ACCUM Late Charges	\$105.04
Recoverable Balance	\$7,766.47
Total Debt	\$252,322.28

1 According to Movant's Broker's Price Opinion, the value of the property is \$550,000.00.
2 See Exhibit "C" which is attached hereto and permissible as a property valuation under Fed. R.
3 Evid. 803(8).

4 **V. LEGAL ARGUMENT**

5 **A. "Cause" Exists Justifying Relief From The Automatic Stay Pursuant To 11 U.S.C**
6 **§ 362(D)(1)**

7 "Cause" justifying relief from stay includes (but is not limited to) "lack of adequate
8 protection of an interest in property" of the party requesting relief. 11 U.S.C. 362(d)(1). Whether
9 there is adequate protection is a question of fact. *Matter of Plaza Family Partnership*, 95 B.R.
10 166, 171 (Bkrtcy. E.D.Cal. 1989); *In re O'Connor*, 808 F.2d 1393, 1395 (10th Cir. 1987). The
11 debtor has the burden of proving that the secured creditor's interest in property (i.e., the collateral)
12 is adequately protected. 11 U.S.C. § 362(g)(2); *In re Gauvin*, 24 B.R. 578, 580 (B.A.P. 9th Cir.
13 1982); *Matter of La Jolla Mortg. Fund v. Rancho Cajon Assocs.*, 18 B.R. 283, 288 (Bkrtcy. S.D.
14 Cal. 1982); *Matter of Boomgarden*, 780 F.2d 657, 663 (7th Cir. 1985). This includes proving
15 "equity."

16 "Cause" is not specifically defined in the Bankruptcy Code. What constitutes "cause" for
17 granting relief from the automatic stay is decided on a case-by-case basis. *Konremyer v. American*
18 *Contractors Indemnity Co.*, 405 B.R. 915, 921 (9th Cir. BAP 2009). "Cause" includes a debtor's
19 failure to make post-petition mortgage payments. *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1982).

20 In this instant case, Movant lacks adequate protection as a result of the Debtors failure to
21 make post-petition payments on their loan with Movant due since April of 2023. Movant has not
22 received any assurances from the Debtor that they intend to cure the missed payments or that they
23 will make payments going forward. Accordingly, relief from stay should be granted so that
Movant may exercise its rights under state law.

1 For all of these reasons, cause exists for the Court to grant relief from stay.

2 **B. The Recovery of Reasonable Attorneys' Fees Incurred throughout the**
3 **Bankruptcy is Appropriate in Accordance with Loan Documents**

4 According to the Loan Documents executed by and between Movant and Debtor, Movant
5 is entitled to its costs and expenses in enforcing its interest to the extent not prohibited by
6 applicable law. Specifically, Page 3 Section 7(E) of the Notice which can be found in Exhibit A
7 states, "The Lender will have the right to be paid back by me for all of its costs and expenses in
8 enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for
9 example, reasonable attorneys' fees."

10 Movant is seeking \$1,238.00 in attorney's fees as a result of the fees incurred in the filing
11 of this motion. Part of those fees include a \$188.00 filing fee while the remaining balance can be
12 attributed to the amount incurred by Movant's attorneys in drafting this Motion. As such,
13 reasonable attorneys' fees are recoverable in accordance with the applicable loan documents.

14 **C. The 14-day Stay of Bankruptcy Rule 4001(a)(3) Should be Waived**

15 As indicated above, cause exists to grant relief from the automatic stay in order to preserve
16 and protect the Property. If relief from the automatic stay is granted, the Court should waive the
17 14-day stay of Bankruptcy Rule 4001(a)(3) to allow Movant to avoid any further delay in
18 exercising Movant's rights and remedies under the Loan documents and applicable non-
19 bankruptcy law. Once the stay is terminated, the Debtor will have minimal motivation to insure,
20 preserve, or protect the collateral; therefore, Secured Creditor requests that the Court waive the
21 14-day stay period imposed by Fed.R.Bankr.P. 4001(a)(3).

22 **VI. CONCLUSION**

23 **WHEREFORE**, based upon all of the above, Movant respectfully requests that this
Court enter an order as follows:

- 1 a. Granting relief from the automatic stay to allow Movant to exercise all available
2 rights and remedies with respect to the real property collateral under the
3 Promissory Note and Deed of Trust (and related documents) and applicable non-
4 bankruptcy law;
- 5 b. Establishing that the Order hereon be binding and effective despite any conversion
6 of this bankruptcy case to a case under any other chapter of the Bankruptcy Code;
- 7 c. Granting Movant the authority to seek recovery of its reasonable attorneys' fees
8 and costs incurred in this proceeding
- 9 d. Waiving the 14-day stay set forth in Bankruptcy Rule 4001(a)(3); and
- 10 e. For such other and further relief as is just and appropriate in the circumstances of
11 this case.

11 Date: 07/25/2023

12 Robertson, Anschutz, Schneid & Crane LLP
13 Attorney for Secured Creditor
14 350 10th Avenue, Suite 1000
15 San Diego, CA 92101
16 Telephone: (470) 321-7112 ext. 52286
17 By: /s/ Fanny Wan
18 Fanny Wan (SBN 277606)
19 Email: fwan@raslg.com



ROBERTSON, ANSCHUTZ, SCHNEID,
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LAW OFFICES

James Robertson, ESQ
Member of Texas Bar

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Member of Texas Bar

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Member of Florida Bar

John Crane, ESQ
Member of Texas Bar

Fanny Wan, ESQ
Member of California Bar

October 26, 2023

Michael Anthony Mannina
2755 Eastgate Avenue
Concord, CA 94520

Michael D. Lee
Lee Bankruptcy & Restructuring Counsel
75 East Santa Clara Street, Suite 1390
San Jose, CA 95113
Email: Michael.Lee@Lee-Li.com

SENT VIA EMAIL AND U.S. MAIL

RE: Notice of Default for Michael Anthony Mannina
Case No: 23-40197

Dear Sir/Madam,

I represent Selene Finance LP, the servicer for mortgage on your client's property located at 2755 Eastgate Avenue, Concord, CA 94520. Please consider this letter as a Notice of Default under the terms of the Stipulation for Adequate Protection. (DE #63 & 67) ("Stipulation").

According to Selene Finance LP, the Debtor has not made the following payments pursuant to the Stipulation. Pursuant to the Stipulation, entered on August 8, 2023, Selene Finance LP hereby provides notice demanding the default be cured within ten (10) days of the date of this notice.

The breakdown of the Debtors' default is as follows:
Payments Due:

6409 Congress Avenue, Suite 100 • Boca Raton, FL 33487
Office 561.241.6901 • Fax: 561.241.9181
www.rasflaw.com

10/01/2023 regular payment @ \$1,537.57	\$1,537.57
09/01/2023 – 10/15/2023 stipulation payments @ \$1,235.84	\$2,471.68
Attorney Fees	\$100.00
Suspense	(\$768.79)
Total Amount Due to Cure Default:	\$3,340.46

The address where payments should be sent is:

Selene Finance LP
3501 Olympus Boulevard
Suite 500
Dallas, Texas 75019

Pursuant to the Stipulation, failure to cure this default within ten (10) days from the date of this notice will result in Selene Finance LP filing an order terminating the automatic stay.

Please notify me once the payment has been sent, and please provide me with proof of the payment as well. Should you have any further questions, please feel free to contact me.

Sincerely,

/s/ Fanny Wan
Fanny Wan, Esquire
Attorney for Secured Creditor
350 10th Avenue, Suite 1000
San Diego, CA 92101
Email: fwan@raslg.com

6409 Congress Avenue, Suite 100 • Boca Raton, FL 33487
Office 561.241.6901 • Fax: 561.241.9181
www.rasflaw.com

Payment Change					
Effective Date	9/1/2023				
Amount	\$1,537.57				

To Be Paid By Debtor			
AGREED ORDER ARREARS			
Payments			
From	To	Payment Amount	Total
04/01/23	08/01/23	\$1,537.57	\$7,587.85
			\$0.00
			\$0.00
			\$0.00
Total Payments in Arrears			\$7,587.85
Fees/Costs			
	Atty Fees/Costs		\$1,238.00
	Property Inspections		
	Late Charges		
	NSF		\$0.00
	Western Union Fees		
	Appraisal		
	Other		
Total Fees/Costs			\$1,238.00
Less Suspense Balance			\$1,510.78
AGREED ORDER TOTAL			\$7,415.06

To Be Paid By Trustee			
AGREED ORDER ARREARS			
Payments			
From	To	Payment Amount	Total
			\$0.00
			\$0.00
			\$0.00
Total Payments in Arrears			\$0.00
Fees/Costs			
	Atty Fees/Costs		
	Property Inspections		
	Late Charges		
	NSF		
	Western Union Fees		
	Appraisal		
	Other		
Total Fees/Costs			\$0.00
Less Suspense Balance			
AGREED ORDER TOTAL			\$0.00

9/15/2023	\$ 1,235.84
10/15/2023	\$ 1,235.84
11/15/2023	\$ 1,235.84
12/15/2023	\$ 1,235.84
1/15/2024	\$ 1,235.84
2/15/2024	\$ 1,235.86